

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 501 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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IDRIS SULAIMAN HYAIT

Versus

STATE OF GUJARAT

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Appearance:

MR AR MAJMUDAR for Petitioner  
Miss B.R.Gajjar, Addl.PUBLIC PROSECUTOR for  
Respondent No. 1 & 2

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/08/98

ORAL JUDGEMENT

1. Heard Mr.A.R.Majmudar, Ld.advocate for petitioner. Rule. Miss B.R.Gajjar, Ld.APP waives service of rule on behalf of respondent Nos 1 & 2. By consent of the parties petition is taken for final hearing.
2. The petitioner claims to be the owner of truck bearing Reg.No.GRV 3418. It is contended by the

petitioner that the petitioner had purchased the said truck from one Mustaq Abdul Salam Danthia of Godhra for a price of Rs.2,27,787/-. That the petitioner has initially paid Rs.1,27,786/- on 19.7.96.. That amount of Rs.1 lac towards purchase price is still required to be paid by the petitioner to the said owner. It is submitted on behalf of the petitioner that the said truck was originally purchased by Mustaq Abdul Salam Danthia by taking finance from financier and as the instalment of said finance was outstanding the truck was not transferred in the record or RTO in the name of said Mustaq Abdul Salam Danthia.

3. It is further contended by the petitioner that on 5.1.1997 the truck in question was hired by one Ramzani Ishaq Kesari for Rs.1500 to transport wooden logs from Bodeli and that thereby the petitioner sent the truck along with his driver Sidiq Abdul Rahim Wadela who was retained for temporary shift and not as a regularly paid driver. It is submitted on behalf of the petitioner that on 6.1.1997 said driver-Sidiq Abdul Rahim Wadela returned in the evening without truck and informed the petitioner that the truck has been seized by Forest Ranger, Nasvadi, near Orsang river on account of alleged illegal transporting of forest produce. That a notice has also been served to him and he has handed over the said notice to the petitioner. That on perusal of the said notice, the petitioner, for the first time, came to know that said Ramzani Ishaq Kesari was transporting the forest produce illegally and without any requisite permission. That thereby the petitioner made an application for return of the custody of the truck to the respondent No.2. However, vide order, dated 9.5.97 the respondent No.2 ordered confiscation of said truck along with forest produce of wooden logs etc.

4. That being aggrieved and dissatisfied by the said order of the respondent No.2 the petitioner preferred Criminal Appeal No.6/97 in the court of Sessions Judge, Baroda and prayed for review of said order on the facts and circumstances produced by him. It is submitted on behalf of the petitioner that the Ld.Sessions Judge, Baroda has considered the facts and circumstances apparent from the record and has applied the rule settled by this court in the matter of State of Gujarat vs Shantilal Mansukhlal Mistry reported in 95(1) GLR 860. However, the court erred in determining the amount of penalty and imposed penalty of Rs.50,000/- on the petitioner where as the value of the forest produce alleged to have been transported through said truck was

only Rs.22,000/-.

5. The Ld.advocate appearing on behalf of the petitioner has relied on the observations made in the matter of State of Gujarat vs Shantilal Mansukhlal Mistry (supra) and has urged that as per the facts involved in the said matter the value of goods alleged to have been illegally transported was only Rs.4,000/- while the value of truck which was confiscated was Rs.75,000/-. That the Ld.Sessions Judge has quashed the said order and has imposed the penalty of Rs.5,000/-. Thus, in the instant case the Ld.Sessions Judge while passing the impugned order has failed to consider the material circumstances regarding the value of the truck and the value of the goods alleged to have been transported. That the court has also erred in not considering the important fact that the petitioner is only the owner of the truck and had taken enough precaution against misuse of his truck. However, the hirer has illegally used the same and have admitted the guilt before the authority. That the hirer is also fined for the alleged offence of illegal transporting of forest produce. As such, the impugned order is required to be quashed and set aside.

6. The Ld.APP-Miss B.R.Gajjar has referred to and relied upon the order passed by the respondent No.2 produced on record at typed pages 1 to 3 and has urged that the said truck is involved in the offence of illegal transportation of forest produce for second time and thereby the order passed by the Sessions Judge can not be said to be illegal or erroneous.

7. I have carefully gone through the order of the Ld.Sessions Judge, Baroda produced on record and in consideration of the facts and circumstances apparent from the record it has to be noted that when the said truck was seized for the first offence of illegal transporting of forest produce present petitioner was not the owner. The present petitioner has acquired the right, title and interest in the said truck only since 19.7.96. Therefore, present petitioner can not be penalised considering the fact that the truck has been involved for the second time in similar offence. That the learned trial judge though has applied the rule laid down by this court in the matter of State of Gujarat vs Shantilal Mansukhlal Mistry (supra) he has erred while determining the amount of penalty of Rs.50,000/- in the present case. As per the facts the petitioner can not be held liable for illegal activities carried out by the hirer without consent and knowledge of the petitioner. Under the circumstances, the impugned order deserves to

be quashed and set aside and/or modified. In my opinion, amount of Rs.5,000/- by way of penalty would be just punishment to the petitioner for his fault in the facts and circumstances of the case.

8. On the basis of above stated discussion the impugned order dated 31.3.98 passed by the Ld.Sessions Judge in Criminal Appeal No.6/97 is hereby quashed and set aside and it is modified to the extent that the petitioner shall be liable to pay fine of Rs.5,000/instead of Rs.50,000/- as per the impugned order. Rule is made absolute accordingly. No costs.

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